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v. Grand Trunk R. R. (1877) Fed. Cas. No. 17,565. This cannot apply to the principal case, as the engineer was without authority. *Chicago & Alton R. R. Co. v. Michie* (1876) 83 Ill. 427; *Robertson v. N. Y. & Erie R. R. Co.* (1856) 22 Barb. (N. Y.) 91. Plaintiff was then a trespasser, and the only duty of the carrier to him was to abstain from wilful or wanton injury. *Clark v. Colorado & Northwestern R. R. Co.* (1908) 165 Fed. 408; *Purple v. Union Pacific R. R. Co.* (1902) 114 Fed. 123. Especially is this true of one who rides upon a car which he knows, or by the exercise of reasonable diligence should know, is not designed for the transportation of passengers. *Morris v. Georgia R. & B. Co.* (1908) 131 Ga. 475; *Radley v. Columbia Southern R. R. Co.* (1904) 44 Or. 332. The fact that the plaintiff was also violating the law at the time of his injury would not necessarily preclude his recovery in an action for negligence. See *McNeill v. Railroad Co.* (1904) 135 N. C. 682; *Duncan v. Maine Cent. R. R. Co.* (1902) 113 Fed. 508. Such violation of law is material only so far as it contributes in the same way to his injury as does his trespassing.

E. J. M.

CARRIERS—NON-DELIVERY—RESTRAINT OF PRINCES.—THE KRONPRINZESSIN CECELIE (1916, CIR. CT. APP.) 238 FED. 668.—The defendant contracted with the plaintiffs respectively, to deliver shipments of gold at London via Plymouth and at Paris via Cherbourg; but was not to be liable for loss by "arrest and restraint of princes, rulers or people." When still two days from Plymouth the master received a telegram from the ship's owners at Bremen, stating, "War has broken out with England, France and Russia. Turn back to New York." The master turned back, putting into Bar Harbor, Me. The owners knew the message to be false, but the master did not. Held, that this was a breach of defendant's contract, for which plaintiffs were entitled to recover. Putnam, J., *dissenting*.

An exception in a bill of lading inserted by the shipowner for his own benefit will be construed most strongly against him. *The Caledonia* (1895) 157 U. S. 124; *The Majestic* (1897) 166 U. S. 375. A blockade is a "restraint of princes," *Geipel v. Smith* (1872) L. R. 7 Q. B. 404; so also an embargo, *Rotch v. Edie* (1795) 6 T. R. 413; and also a siege, *Rodocanachi v. Elliot* (1874) L. R. 9 C. P. 518. But mere fear of war is not a "restraint of princes." *Forster v. Christie* (1809) 11 East, 205. It would seem then that the court was right in holding that there was no "restraint of princes" in the principal case. The only case cited by the dissenting judge for the contrary view is one in which the deviation took place after war was declared. *The British & Foreign Ins. Co. v. The Sanday & Co.* [1916] A. C. 650. But the other defense, as indicated by the dissenting opinion, might well have been sustained. The master of a ship at sea is under a plain duty to take care of all interests intrusted to him. *Notara v. Henderson* (1872) L. R. 7 Q. B. 225. A deviation from the ordinary course of a voyage, if reasonably necessary for the safety of the ship or cargo, as, for example, saving human life, is not a breach of the

contract of affreightment. *Kish v. Taylor* [1911] 1 K. B. 625. But the master must act in good faith and exercise his best discretion for the benefit of all concerned. *New England Insurance Co. v. The Sarah Ann* (1839) 13 Pet. (U. S.) 400; *The Amelie* (1867) 6 Wall. (U. S.) 27. In the principal case the court came to the conclusion that the captain exercised no discretion, but merely obeyed the order of the owners, and that his action could be justified only if it fell within the stipulated exception. This is a question to be answered from all the circumstances, but the conclusion does not seem entirely necessary. If the shipmaster had known the actual situation, and had pursued exactly the same course on his own initiative, he would have been justified in fact, especially when it appears that the delivery of the gold of the National City Bank would have brought him into Cherbourg only a day before the actual declaration of war.

F. W. D.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE.—*BERG v. ERICKSON* (1916) 234 FED. 817.—E, a resident of Kansas, showed B, a resident of Texas, who knew nothing of Kansas conditions, certain pastures into which he proposed to put B's cattle, and contracted to furnish plenty of good grass, salt and water during the grazing season, for which B agreed to pay him \$7 per head. The worst drought ever known in Kansas made it impossible for E to furnish plenty of good grass in July, August, September and October, although he furnished plenty during May and June, and sufficient the other months to keep the cattle alive. *Held*, that E was not absolved from his contract by the unprecedented drought.

An act of God will excuse the non-performance of a duty created by law but not one created by contract. *Davidson v. Gaskill* (1912) 121 Pac. (Okla.) 649; *Worthington v. Charter Oak Fire Ins. Co.* (1874) 41 Conn. 372. But an exception is made where the parties contracted on the basis of the continued existence of a person or thing, and where the subject matter of the contract is destroyed. *Howell v. Coupland* (1876) 1 Q. B. D. 258; *Singleton v. Carrol* (1831) 22 Am. Dec. (Ky.) 95. Where a contract called for a minimum quantity of peaches, to be grown in specific orchards which the defendant's agents had inspected, failure of performance in full, due to an unexpected drought, was excused. *Ontario v. Cutting Packing Co.* (1901) 134 Cal. 21. It would seem that the principal case might have been decided in the same way, since the parties presumably contracted for specific grass, in the sense that it was to be grown on the lands in question.

J. I. S.

EVIDENCE—PRIVILEGE AGAINST SELF-INCRIMINATION—COMPULSORY INFORMATION AS TO AUTOMOBILE ACCIDENTS.—*STATE v. STERRIN* (1916) 98 ATL. (N. H.) 482.—Defendant was convicted of violating a statute requiring an automobile driver, knowing he has injured a person, to return to the scene of the accident, and give his name, address, license number, and other information to any person demanding the same. Defendant con-